86-878

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

NO.

GLADYS HOBSON,

Petitioner

v.

STATE OF CONNECTICUT,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF THE STATE OF CONNECTICUT

JOHN R. WILLIAMS,
SUE L. WISE
WILLIAMS AND WISE
265 Church Street
New Haven, CT 06510

Counsel for Petitioner

November 20, 1986

QUESTION PRESENTED

1. Did the Connecticut Appellate Court unconstitutionally dilute the harmless error doctrine by failing to require the State of Connecticut to prove beyond a reasonable doubt that the erroneous admission of illegally seized evidence against petitioner did not contribute to her conviction?

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STATE OF CONNECTICUT

The petitioner, GLADYS HOBSON, respectfully prays that a writ of certiorari be issued to review the judgment and opinion of the Appellate Court of the State of Connecticut entered in this proceeding on June 24, 1986.

OPINION BELOW

The opinion of the Appellate Court of the State of Connecticut is reported at 8 Conn. App. 13 (1986) and appears in the appendix hereto. The pertinent part of that decision appears in the appendix hereto at pages 14a-22a.

JURISDICTION

The opinion of the Appellate Court of the State of Connecticut was entered on June 24, 1986. A timely motion to reargue was denied on August 8, 1986, and a timely petition for review of the Appellate Court decision by the Supreme Court of the State of Connecticut was denied on September 24, 1986. This petition for certiorari has been filed within 60 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

QUESTIONS PRESENTED

1. Did the Connecticut Appellate Court unconstitutionally dilute the harmless error doctrine by failing to require the State of Connecticut to prove beyond a reasonable doubt that the erroneous admission of illegally seized evidence against petitioner did not contribute to her conviction?

CONSTITUTIONAL PROVISION INVOLVED

AMENDMENT IV...The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATUTES INVOLVED

General Statutes §53a-119(8) provides in pertinent part: "A person is guilty of larceny by receiving stolen property if he receives, retains, or disposes of stolen property knowing that it has probably been stolen or believing that it has probably been stolen, unless the property is received, retained or disposed of with purpose to restore it to the owner."

General Statutes §53a-124(a) provides in pertinent part: "A person is guilty of larceny in the third degree when he commits larceny as defined in section 53a-119 and: (1) The value of the property or service exceeds one thousand dollars."

STATEMENT OF CASE

In September 1982, a New Haven police officer obtained a search warrant to authorize the search of Gladys Hobson's home for drugs which the officer believed were being sold by one of Mrs. Hobson's adult sons who lived with her. While executing that warrant, Officer Datillo observed many articles of clothing of differing sized, some with store tags still attached, various kinds of consumer goods, including stereo equipment, five television sets, cameras, projectors and numerous pieces of jewelry in various rooms of the Hobson home. Because of the quantity and diversity of goods, the officer suspected that some of the merchandise was stolen. Through a later computer check the officer determined that

two of the items, a Sony television set and a handgun had been reported stolen. Based on this information, the officer obtained a second warrant authorizing him to search Mrs. Hobson's home and person and to seize only the television set and the gun.

On October 7, 1982 the officer, accompanied by other New Haven police officers, entered the Hobson home to execute the second warrant. The two items, the television and the gun, which were specified in the warrant, the police knew from their previous visit, were located in Mrs. Hobson's bedroom. While in Mrs. Hobson's bedroom, the police saw on or around the Mrs. Hobson's dresser, a pocket watch, a pin, a bracelet, an earring, a few coins and a ring. The

police seized those items.

Despite the fact, that the television and gun, the only two items specified in the warrant, had been found in the Mrs. Hobson's bedroom, the police went on to search several rooms of the home including the attic. They seized 148 items, some of which appeared on their face to be stolen. However, they seized from the attic, a creamer, sugar bowl, gravy ladle and tray. There was nothing about the dresser items or the items seized from the attic which in any way identified them as stolen. The seized items were subsequently displayed at police headquarters and a few of the items were identified as stolen.

Prior to trial, the Hobson moved to suppress all of the physical evidence seized. (App. D), The trial court

denied the motion to suppress. (App. p.3d)

After a trial to the jury, the petitioner was convicted of larceny in the third degree in violation of General Statutes §53a-119(8) and §53a-124.

On appeal, Gladys Hobson contended that the trial Court erred in failing to suppress the television set, the gun, the items taken from her dresser, and the items taken from the attic. The Connecticut Appellate Court ruled that the seizure of the dresser top items comported with the plain view doctrine and was permissible. However, the Appellate Court determined that the search of the attic and the seizure of several items located in the attic, exceeded the scope of the search as authorized in the warrant, and that these items should have been

suppressed by the trial Court. The Appellate Court found, however, that the failure of the trial Court to suppress these items was harmless error. The Appellate Court opined, that since there was expert testimony that the television set, gun and items seized from the dresser top were valued at "approximately $1,042.63," there was sufficient evidence from which the jury could have concluded that the defendant committed larceny in the third degree. (8 Conn. App. 13; App. pp14a-22a) The Appellate Court, therefore, affirmed the conviction.

REASONS FOR GRANTING THE WRIT

THE DECISION OF THE CONNECTICUT APPELLATE COURT CONFLICTS WITH THE DECISION OF THIS COURT IN DELAWARE V. VAN ARSDALL, U.S. , 106 S. Ct. 1431 (1986).

In Delaware v. Van Arsdall, U.S. , 106 S.Ct. 1431 (1986) and in Rose v. Clark, U.S. , 106 S.Ct. 3101 (1986) this Court reaffirmed the principle "that an otherwise valid conviction should not be set aside if the reviewing court may confidently say, on the whole record, that the constitutional error was harmless beyond a reasonable doubt." 106 S.Ct. 1431.

While agreeing with petitioner that the seizure of certain items taken from the attic of her home violated her Fourth Amendment rights, the Connecticut Appellate Court concluded that the

admission of these items in evidence was harmless error. In deciding that this Fourth Amendment error, obviously of constitutional dimension, was harmless error, the Appellate Court failed to properly apply the harmless error standard as promulgated by this Court.

It is well-established that Fourth Amendment violations are subject to harmless error analysis. Chambers v. Maroney, 399 U.S. 42, 90 S.Ct. 1975 (1970); Nevertheless, under Chapman v. California, 386 U.S. 18, 87 S.Ct. 824 (1967) and Harrington v. California, 395 U.S. 250, 89 S.Ct. 1726 (1969) overwhelming evidence of guilt must be present in order for a reviewing court to find that error of constitutional magnitude is harmless. Chapman required that the beneficiary, the

State, of a constitutional error, prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained. See Bundy v. Florida, U.S. , 107 S.Ct. (1986) (dissent from denial of petition for certiorari, Brennan, J.) Chapman also required the reversal of a conviction where there was a "reasonable possibility that the evidence complained of might have contributed to the conviction." The Connecticut Appellate Court did not apply either of these standards to the case at bar. Chapman unequivocally required that "before a federal constitutional error can be held harmless, the Court must be able to declare a belief that it was harmless beyond a reasonable doubt." As this Court has made clear, an error in admitting

plainly relevant evidence which possibly influenced the jury adversely to a litigant cannot be conceived of as harmless. Fahy v. Connecticut, 357 U.S. 85, 84 S.Ct. 229 (1963) See Field, Assessing The Harmlessness Of Federal Constitutional Error -- A Process In Need Of A Rationale, 125 U. Pa. L. Rev. 15 (1976). As Professor Field has noted there is language in Chapman supporting the position that "in assessing harmlessness of federal constitutional error, one should focus on the incriminating quality of the erroneously admitted evidence instead of weighing the untainted evidence in the case". See also, Note, 83 Harv. L. Rev. 814, 876 (1970).

Because the Appellate Court failed to make this crucial harmless error analysis,

this Court should grant certiorari to properly apply the principles of Chapman and Harrington.

Furthermore, in deciding that the constitutional error was harmless, the Appellate Court relied on expert testimony to establish that the value of the "properly" seized items was "approximately $1,042.65." On its face, the decision of the Appellate Court fails to establish either the overwhelming evidence of guilt standard or guilt beyond a reasonable doubt. As this Court made clear in Chapman: "We must recognize that harmless-error rules can work unfair and mischievous results when, for example, highly important and persuasive evidence though legally forbidden, finds its way into a trial in which the question of

guilt of innocence is a close one." 386 U.S. 18, 22 In the case at bar, the guilt or innocence of Mrs. Hobson, after the exclusion of the illegally seized items, was by no means a foregone conclusion. The Appellate Court based its harmlessness analysis on the "approximate" valuation of an expert witness who established that the legally seized items may have been worth forty-two dollars more than the statute allowed. Furthermore, the Appellate Court failed to consider the impact on the jury of the cumulative admission of this body of ostensibly stolen items.

As Chief Justice Rehnquist pointed out (albeit in the Sixth Amendment) in Delaware v. Van Arsdall, supra, "Whether such an error is harmless in a particular case depends upon a number of factors,

including the importance of the [illegal evidence], whether the [illegal evidence] was cumulative, the presence or absence of corroborating or contradictory [evidence] on material points, and the overall strength of the prosecution's case." In the case at bar the evidence of guilt was extremely slim; the illegally seized evidence, which the jury was allowed to consider, certainly unconstitutionally contributed to the conviction. It certainly cannot be said that the error was harmless beyond a reasonable doubt.

CONCLUSION

For these reasons, in order to prevent dilution of the harmless error doctrine in the context of the Fourth Amendment, a writ of certiorari should issued to review the judgment and opinion of the Appellate Court of the State of Connecticut.

Respectfully submitted,

SUE L. WISE
51 Elm Street
New Haven, CT 06510
(203) 562-9931

November 21, 1986

(3)

86-878

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JOHN R. WILLIAMS,
SUE L. WISE
WILLIAMS AND WISE
265 Church Street
New Haven, CT 06510

Counsel for Petitioner

November 20, 1986

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APPENDIX

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APPENDIX A

A P P E L L A T E C O U R T

June Term, 1986

STATE OF CONNECTICUT V. GLADYS HOBSON

HULL, SPALLONE and BEILUCH, Js.

Argued February 14, 1986-decision released June 24, 1986

Substitute information charging the defendant with the crime of larceny in the third degree, brought to the Superior Court in the judicial district of New Haven and tried to the jury before Quinn, J.; verdict and judgment of guilty, from which the defendant appealed to this court. No error.

John R. Williams, for the appellant (defendant).

Paul M. Scimonelli, assistant state's

attorney, with whom, on the brief, were Arnold Markle, state's attorney, and Julia DiCocco Dewey and Paul J. Devlin, assistant state's attorneys, for the appellee (state).

HULL, J. After a trial to a jury, the defendant was convicted of larceny in the third degree violation of General Statutes §53a-119(8) and §53a-124.[1] In this appeal from that judgment, she claims that the

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[1]General Statutes §53a-119(8) provides in pertinent part: "A person is guilty of larceny by receiving stolen property if he receives, retains, or disposes of stolen property knowing that it has probably been stolen or believing that it has probably been stolen, unless the property is received, retained or disposed of with purpose to restore it to the owner."

General Statutes §53a-124(a) provides in pertinent part: "A person is guilty of larceny in the third degree when he commits larceny as defined in section 53a-119 and: (1) The value of the property or service exceeds one thousand dollars."

trial court erred in three respects: (1) in refusing to suppress the fruits of two searches of her home; (2) in failing to declare a mistrial because of alleged jury misconduct; and (3) in denying her motion for judgment of acquittal based on insufficiency of the evidence. We find no error.

When ruling on the defendant's motion to suppress, the trial court could reasonably have found the following facts. In September of 1982, officer John Dattilo of the New Haven police department obtained a warrant authorizing a search of the defendant's Hazel Street home for drugs which Dattilo believed were being sold by one of the defendant's adult sons

who lived with her.[2] While executing that warrant, Dattilo observed many articles of clothing of differing sizes, some with store tags still attached, various kinds of consumer goods, including stereo equipment, five television sets, cameras, projectors and numerous pieces of jewelry. Because of the quantity and diversity of goods, Dattilo suspected that some of the merchandise was stolen. He therefore recorded the serial numbers of several of the items and through a later computer check determined that two of them, a Sony television set and handgun, had been reported stolen. Based on this information, Dattilo obtained a second warrant authorizing him to search the

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[2] As a result of the search, narcotics and paraphernalia were discovered.

defendant's home and person and to seize the television and the gun.

On October 7, 1982, accompanied by other officers including Francis Cacioli, the detective in the New Haven police department who was in charge of the theft recovery unit, Dattilo entered the defendant's house to execute the warrant. In addition to seizing the two items listed in the search warrant, the officers took approximately 148 other articles they reasonably believed might be stolen. In an attempt to determine whether any of the additional items was in fact stolen, the police put them on display at headquarters and invited members of the public to view them. Several individuals identified items as their property, and the defendant

was charged with larceny of those items and of the television set and the gun. At trial, the defendant moved to suppress the television set, the gun and the other objects, claiming that both searches were invalid and that the items seized were, therefore, the inadmissible fruits of an illegal search. The trial court denied the motion.

The defendant's first claim on appeal is that the police, by looking for the serial numbers on the television set and the gun, conducted a search of those items.[3] She argues that this search was

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[3]The defendant does not challenge the search of her home, nor could she since the first warrant authorized the police to search the entire home for narcotics and paraphernalia. Rather, it is the "search" of the gun and the television which the defendant claims was unlawful on the first visit.

unlawful because the warrant under which the police entered her home authorized them to search only for drugs and drug paraphernalia, an undertaking which one of the police officers who conducted the search conceded would not be aided by looking for the serial numbers.

To challenge the legality of a search, a defendant must first show that he had a reasonable expectation of privacy in the area searched. State v. Daay, 5 Conn. App. 496, 498, 500 A.2d 248 (1985). The defendant here made no such showing as to the gun or the television set. She did not claim at the suppression hearing[4] either that she owned or that she pos-

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[4] While there was no testimony at the suppression hearing concerning the defendant's interest in the television, at trial the defendant claimed to own the television set. We note that even had the

sessed the television set and the gun "although [s]he could have doe so without running the risk of having that testimony

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defendant made the requisite showing that she had an expectation of privacy in the television set and the gun, she would not have prevailed. The basis of the defendant's claim as to the gun is that the police moved the television set from the wall to record its serial number and by so doing searched it. We disagree. Our Supreme Court has recognized that "when a police officer comes upon evidence in open view, that discovery is not a search at all." (Footnote omitted.) State v. Federici, 179 Conn. 46, 56, 425 A.2d 916 (1979). Here, the police officers saw the television set in open view in the defendant's bedroom while they were executing a valid search warrant. Accordingly, their discovery of the television did not constitute a search. Contrary to the defendant's assertion, the officer did not conduct a search of the television merely by moving it away from the wall. The defendant's claim as to the gun is similar: that the police searched the gun by looking for its serial number. There was, however, no testimony at the suppression hearing as to where the serial number on the gun was located. Accordingly, there was no basis for the trial court to determine whether or not the items had been searched by the police.

used to prove [her] guilt of the [larceny] charge. Simmons v. United States, 390 U.S. 377, 394, 88 S.Ct. 967, 19 L. Ed. 2d 1247 (1968)."[5] State v. Haynes, 7 Conn. App. 550, 553, A.2d (1968). Accordingly, she has not shown that she is entitled to challenge any "search" of the television set or of the gun, and we, therefore, reject her claim that the trial court erred in refusing to suppress the gun and the television.[6]

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[5]The trial court did not base its ruling on the defendant's motion to suppress on a finding that the defendant did not have a reasonable expectation of privacy in the gun and the television. We are free, however, to sustain the trial court's decision on grounds different from those it adopted. Johnny Cake, Inc. v. Zoning Board of Appeals, 180 Conn. 296, 301, 429 A.2d 883 (1980).

[6]The defendant also claims that the police "searched" other items by looking for their serial numbers, and thereby unlawfully exceeded the scope of the warrant. She has not, however, provided

The defendant next claims that by seizing 148 items in addition to the two authorized by the warrant, the police, during their second search of her home, conducted a general search in violation of the fourth amendment to the United States constitution and article 1, §7 of the Connecticut constitution. The state contends that the seizure of these items was lawful under the plain view doctrine.

"""[W]here a police officer has a warrant to search a given area for specified objects, and in the course of

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an adequate record for the court to determine the merits of this claim. While there was testimony at the suppression hearing that the police copied down serial numbers from many items, there was no testimony as to where the serial numbers were located. Accordingly, we cannot determine whether any search of those items occurred, and cannot, therefore, determine the merits of the defendant's claim.

the search comes across some other article of incriminating character, the property is seizable under the plain view doctrine." United States v. Pacelli, 470 F.2d 67, 70 (2d Cir. 1972), cert. denied, 410 U.S. 983, 93 S.Ct. 1501, 36 L. Ed. 2d 178 (1973), citing Coolidge v. New Hampshire, 403 U.S. 443, 465, 514-16, 91 S. Ct. 2022, 29 L. Ed. 2d564 (1971).' United States v. Canestri, 518 F.2d 269, 274 (2d Cir. 1975)." State v. Pepe, 176 Conn. 75, 79, 405 A.2d 51 (1978). The plain view doctrine may be invoked to validate the seizure of contraband or stolen goods not mentioned in a warrant where two requirements[7] are satisfied:

[7]There has been extensive dispute in the United States Supreme Court; see Texas v. Brown, 460 U.. 730, 103 S.Ct. 1535, 75 L. Ed. 2d 502 (1983); Coolidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022, 29

(1) the initial intrusion which enabled the police to view the items was lawful; and (2) the police had probable cause to believe that the times were contraband or stolen goods.[8] Id., 79.

Here, the first precondition for application of the plain view doctrine was fulfilled. The police had a legitimate prior justification for being in a posi-

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L. Ed. 2d 564 (1971); over whether a third requirement, that the police discover the items inadvertently, should be applied. While this area has not been definitively resolved, it is clear that in Connecticut "inadvertence is not required if the items seized fall under the category of contraband, stolen property or objects dangerous in themselves." State v. Couture, 194 Conn. 530, 547, 482 A.2d 300, cert. denied, 469 U.S. , 105 S.Ct. 967, 83 L. Ed. 2d 971 (1984).

[8]Where the seized object is evidence, as opposed to contraband, the police must have probable cause to believe that it was "reasonably related, in an evidentiary sense, to the commission of the crime." State v. Onofrio, 179 Conn. 23, 41, 425 A.2d 560 (1979).

tion to view the merchandise: they were executing a valid warrant to search for and seize the television set and the gun. Whether or not the requirements for applying the doctrine were met, therefore, turns on whether there was probable cause to believe that the seized items were stolen. Probable cause to believe that goods are stolen exists when there is enough trustworthy information supporting that proposition that a person of reasonable caution would be justified in believing it. See State v. Asherman, 193 Conn. 695, 705, 478 A.2d 227, cert. denied, U.S. , 105 S. Ct. 1749, 84 L. Ed. 2d 814 (1984). "The quantum of evidence necessary to establish probable cause exceeds mere suspicion, but is substantially less than that required for

conviction." State v. Acquin, 187 Conn. 647, 657, 448 A.2d 163 (1982), cert. denied, 463 U.S. 1229, 103 S.Ct. 3570, 77 L. Ed. 2d 1411 (1983).

In addition to the television set and the gun, the state introduced into evidence several other items which were seized during the second search of the defendant's home: a pocket watch, a cameo pin, a bracelet, an earring, some coins, a creamer, a sugar bowl, a gravy ladle and accompanying tray, and a ring. When the police seized these items, they had extensive information to support their hypothesis that they were stolen. Before the police went into the defendant's home to execute the first warrant, they had probable cause to believe that narcotics were being sold from the home, and in fact

when they entered the home on that occasion, they found narcotics ad narcotics paraphernalia. They knew, on the basis of their training and experience, that stolen clothing and consumer goods are often accepted in lieu of cash as payment for drugs, and they saw large quantities of such items in the defendant's home: stacks of designer jeans in different sizes, a rack containing articles of clothing that still had store tags attached to them, stereos, cameras, television sets and several pieces of jewelry. When the police entered the home to execute the second warrant, having the information gained from the first search in mind, they again found similar objects present. They also discovered a couple of trash bags full of silverware and similar

objects, some with initials or inscriptions which did not refer to the defendant or her sons. Also present was a case of exerciser equipment, and a fur coat with initials that did not match those of any of the occupants of the house.

"Our cases have made clear that '[t]here is often a fine line between mere suspicion and probable cause, and "[t]hat line necessarily must be drawn by an act of judgment formed in light of the particular situation and with account taken of all the circumstances." Brinegar v. United States, [338 U.S. 160, 176, 69 S.Ct. 1302, 93 L. Ed. 1879 (1949)].' State v. Penland, 174 Conn. 153, 155-56, 384 A.2d 356, cert. denied, 436 U.S. 906, 98 S.Ct. 2237, 56 L. Ed. 2d 404 (1978)." State v. Acquin, supra, 657. Here, the

evidence available was sufficient to cross this line and provide the police with probable cause to believe that the articles were stolen.

In light of these factors, we accept the state's contention that the technical requirements for invocation of the plain view doctrine were satisfied. There is, however, an additional limitation to application of the doctrine: it may not be used to permit a general or exploratory search. Coolidge v. New Hampshire, 403 U.S. 443, 466, 91 S.Ct. 2022, 29 L. Ed. 2d 564 (1971); State v. Onofrio, 179 Conn. 23, 40, 425 A.2d 560 (1979). The application of the doctrine to validate the seizure of some of the articles found in the defendant's home would have such an effect. Here, the second warrant was

extremely precise, authorizing the seizure of only two specified articles: the gun and the television. In spite of this, and even though they found the television and the gun in the defendant's bedroom where they knew the articles had previously been located, the police searched several other rooms of the house, including the attic. As a result of the search of the attic, the police discovered and seized the creamer, sugar bowl, and the gravy ladle and its tray. In searching for and seizing these items, the police ignored the limits of the warrant and thereby conducted a general or exploratory search in violation of the prohibition on unreasonable searches and seizures in both our state and federal constitutions. Accordingly, the trial court erred in

refusing to suppress these items.

The trial court correctly determined that the items seized from the defendant's bedroom should not be suppressed. The police had a warrant authorizing them to seize the television and the gun, and they knew that the gun and television were previously located in the defendant's bedroom. The police, therefore, had authority to enter the defendant's bedroom and search that room to the extent necessary to find the gun and the television. While lawfully present in the defendant's room the police saw, in open view on or around the defendant's dresser, the pocket watch, pin, bracelet, earring, coins and ring. They had, as discussed above, probable cause to believe that those items were stolen. Accordingly,

under the plain view doctrine, the police were entitled to seize those items. State v. Pepe, supra, 79.

Having determined that the trial court should have suppressed the gravy ladle, tray, sugar bowl and creamer, we must decide what remedy should be awarded to the defendant. To prove the defendant committed larceny in the third degree, the state was required to show that he value of the stolen items she received or retained exceeded $1000. General Statutes §53a-124. To establish the value of the stolen items, the state elicited testimony from Joseph Pari, an auctioneer and appraiser. Pari testified that the market value of the television set when stolen was approximately $400. He estimated that the combined value of the other items

taken from the defendant's bedroom, exclusive of the television and the gun, was approximately $542.65. He testified that the combined value of the four items taken from the attic was approximately $80. Stephen Prindle, the owner of a gun store, testified that the market value of the gun on October 7, 1982, was approximately $100. Given this evidence, the jury could reasonably have concluded that the combined fair market value of the items legally seized was over $1000 a required to sustain a conviction under General Statutes §53a-124. Had the court properly suppressed the bowl, creamer, ladle and tray, the jury would have been allowed to consider the value of only the television, gun, watch, pin, bracelet, earring, coins and ring which the state's

experts testified was approximately $1042.65.[9] Accordingly, even had the trial court properly suppressed the items found in the attic, there would still have been sufficient evidence from which the jury could have found that the defendant committed larceny in the third degree. We conclude, therefore, that the trial court's error was harmless.

The defendant next claims that the trial court erred in denying her motion for mistrial based on alleged juror misconduct. Before the close of evidence,

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[9] While the defendant asserted that the television and the gun should be suppressed as the fruits of the unlawful first search, she did not claim, nor could she claim given the warrant, that the seizure of the television and the gun was unlawful independent of the first search. Since we have rejected the defendant's argument as to the first "search," we find no basis for suppressing the television and the gun now.

while an argument was being made with the jury absent, defense counsel claimed to have heard someone in the adjoining jury deliberation room shout that "It's a one of a kind earring. She remembers what it was."[10] After the incident occurred, defense counsel moved for a mistrial, and the court denied the motion and noted the defendant's exception. The defendant now claims that any premature juror deliberation requires reversal if the jurors did more than merely refresh their memory of the evidence. We reject the defendant's argument.

In State v. Washington, 182 Conn. 419,

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[10] The comment apparently referred to the testimony of one of the state's witnesses in which she related that her home had been burglarized and also described some of the articles, including an earring, which had been taken.

429, 438 A.2d 1144 (1980), our Supreme Court held that "it is error of constitutional magnitude for the trial judge expressly to instruct the jurors that they may discuss the case among themselves prior to its submission to them . . . ." Accord State v. Castonguay, 194 Conn. 416, 434, 481 A.2d 56 (1984). In this case, however, the trial court did not expressly allow the jurors to deliberate prematurely. In fact, it affirmatively told them not to. Where a trial court does not authorize the jury to deliberate prematurely, a finding of error is not automatic. In such circumstances, "[t]he test is 'whether or not the misconduct has prejudiced the defendant to the extent that he has not received a fair trial.' United States v. Klee, [494 F.2d

394, 396 (9th Cir. 1974)]." State v. McCall, 187 Conn. 73, 77, 444 A.2d 896 (1982). Here, there is no indication that the fairness of the defendant's trial was in any way affected by any premature deliberation. "A trial court has a large measure of discretion in dealing with a motion for a mistrial; State v. Martinex, 173 Conn. 541, 544, 378 A.2d 517 (1977); and its decision as to the fairness of the trial must be afforded great weight." State v. McCall, supra, 77. The trial court did not abuse its discretion in denying the defendant's motion for mistrial.

The defendant claims that the state failed to prove two of the elements of the crime of larceny beyond a reasonable doubt: that the defendant possessed the

stolen items, and that she possessed them knowing that they were probably stolen. "Appellate review of such a claim requires us to undertake a two step analysis. 'We first review the evidence presented at the trial, construing it in the light most favorable to sustaining the jury's verdict. We then determine whether, upon the facts thus established and the inferences reasonably drawn therefrom, the jury could reasonably have concluded that the cumulative effect of the evidence established guilt beyond a reasonable doubt.' State v. Sinclair, 197 Conn. 574, 576, 500 a.2d 539 (1985)." State v. Brown, 198 Conn. 348, 352, 503 A.2d 566 (1986). Applying this standard, we conclude that the evidence was sufficient to support the jury's verdict.

The defendant first challenges the sufficiency of the state's proof that she possessed the stolen items. "In criminal law, the word 'possession' generally denotes '"an intentional control of a designated thing accompanied by knowledge of its character." [Citation omitted.]' State v. Harris, 159 Conn. 521, 531, 271 A.2d 74 (1970), cert. dismissed, 400 U.S. 1019, 91 S.Ct. 578, 27 L. Ed. 2d 630 [1971]; see Webster, Third New International Dictionary." State v. Kas, 171 Conn. 127, 130, 368 A.2d 196 (1976). The evidence presented at trial, construed in the light most favorable to sustaining the verdict, showed that the defendant owned and lived in the house from which the items were seized. She admitted to possessing, in fact she claimed to own,

the television which was found in her bedroom. As discussed above, the pocket watch, pin, bracelet, earring, coins and ring were also fund in the defendant's bedroom, as was the gun. The objects were on top of her dresser or in the dresser area. The jury can hardly be deemed to have engaged in speculation by concluding that the defendant possessed items that were found out in the open in her own bedroom.[11] The defendant was not merely present in the home when the objects were found; see id.; she owned the home and she

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[11] Generally, when faced with a claim of insufficient evidence, we review the evidence as presented at trial since if the evidence as presented were insufficient to support a guilty verdict, then "the state would be barred by double jeopardy principles from retrying the defendant, and [she] would be entitled to a judgment of acquittal rather than a new trial. Burks v. United States, 437 U.S. 1, 98 S.Ct. 2141, 57 L. Ed. 2d 1 (1978)."

lived there. See State v. Chisolm, 165 Conn. 83, 84, 328 A.2d 677 (1973) (evidence that defendant possessed narcotics found in locked bin in basement insufficient where defendant did not live on premises and where state did not show that tenants of premises did not have access to the bin).

The defendant's final claim is that the state did not produce sufficient evidence to prove beyond a reasonable doubt that she possessed the items knowing they were probably stolen. We disagree.

State v. Grant, 6 Conn. App. 24, 32, 502 A.2d 945 (1986). Here, however, we do not need to review the sufficiency of the evidence as to the defendant's possession of the items seized from the attic since we have already determined that they should have been suppressed and even without those items there was sufficient evidence that the value of the property exceeded $1000.

"To convict a defendant of the crime of receiving stolen goods, it is necessary for the state to prove beyond a reasonable doubt that he had actual knowledge that the goods were stolen when he received them. State v. Pambianchi, 139 Conn. 543, 546, 95 A.2d 695 [1953]; State v. Newman, 127 Conn. 398, 400, 17 A.2d 774 [1940]. Ordinarily, guilty knowledge can be established only through an inference from other proved facts and circumstances. The inference may be drawn if the circumstances are such that a reasonable man of honest intentions, in the situation of the defendant, would have concluded that the property was stolen." State v. Fredericks, 149 Conn. 121, 124, 176 A.2d 581 (1961). Given the quantity, diversity, and condition of the consumer

goods, jewelry and clothing present in the home, a reasonable man of honest intentions would have concluded that the items were stolen. The jury, therefore, could infer that the defendant had the requisite actual knowledge that the goods were probably stolen. Additionally, we note that possession of recently stolen property "raises a permissible inference of criminal connection with the property, and if no explanation is forthcoming, the inference of criminal connection may be as a principal in the theft, or as a receiver under the receiving statute, depending upon the other facts and circumstances which may be proven." State v. Palkimas, 153 Conn. 555, 559, 219 A.2d 220 (1966). The trial court did not err in denying the

defendant's motion for judgment of aquittal.

There is no error.

In this opinion the other judges concurred.

APPENDIX B

STATE OF CONNECTICUT

NO. CR6-211459	SUPERIOR COURT
STATE OF CONNECTICUT	JUDICIAL DISTRICT OF
VS.	NEW HAVEN
GLADYS HOBSON	DECEMBER 2, 1983

Present, Hon. Francis R. Quinn, Judge.

JUDGMENT.

The information of an Assistant State's Attorney, within and for the Judicial District of New Haven, charging Gladys Hobson with the crimes of Larceny, 2nd Degree by possession and Larceny, 3rd Degree by possession, and Theft of a firearm, and a substituted information charging said Gladys Hobson with the crimes of Larceny, 1st Degree, by possession and Theft of firearm, as by informations on file will appear, were

filed in the Superior Court, Geographical Area 6 in the September, 1982 criminal term of said Court, and thence to October 15, 1982 when said action was transferred to this Court, and thence to November 2, 1982 when the defendant filed a Motion for appointment of Special Public Defender, which the Court (Fishman, J.) on said date granted and appointed Francis D'Urso Special Public Defender, and when the defendant appeared before this Court and for pleas said Not Guilty to both counts of said substituted information and elected to be tried by a jury of 6, thence to October 18, 1983 when the State Attorney, with permission of the Court filed a second substituted information charging Larceny, 3rd Degree, and thence to October 18, 1983 when the State

Attorney, with permission of the Court filed a second substituted information charging Larceny, 3rd Degree, and thence to October 20, 1983 when the Court (Quinn, J.) granted in part and denied in part the Motion of the defendant filed October 19, 1983 for discovery and inspection, and thence to October 24, 1983 when the Court (Quinn, J.) granted the Motion of the defendant filed October 19, 1983 to require notice of uncharged misconduct evidence and granted the Motion of the defendant filed October 19, 1983 in limine to establish fair procedures for the examination of witnesses and statements, and on said October 24, 1983 the Court (Quinn, J.) granted the Motion of the defendant filed October 19, 1983 for production at trial, and on said date the

Court (Quinn, J.) denied the Motions of the defendant filed October 19, 1983 to dismiss and to suppress physical evidence, and when the defendant filed a Motion in limine re: testimony concerning narcotics, which the Court on said date (Quinn, J.) granted, and thence to October 26, 1983 when the State filed a list of stolen items to be offered at trial, and thence to October 28, 1983 when the defendant filed a Motion for judgment of acquittal, and when all the evidence having been submitted, said action was committed to the jury who returned a verdict of Guilty as charged to count one of said second substituted information, which verdict was accepted and ordered recorded by the Court, and when the defendant filed a Motion for new trial,

and thence to the present time when the parties appeared and were heard by the Court on said Motions for acquittal and for new trial, and when the Court denied said Motions, and the defendant appeared for sentence.

Whereupon it is adjudged that the defendant be committed to the Commissioner of Correction for a term of three years, suspended after service of one year, and placed on probation for three years.

By the Court

Chief Clerk.

APPENDIX C

SUPREME COURT

STATE OF CONNECTICUT

NO. PSC-86-1020

State of Connecticut

v.

Gladys Hobson

ORDER OF PETITION FOR
CERTIFICATION TO APPEAL

On consideration of the petition by the defendant for certification to appeal from the Appellate Court (8 Conn. App. 13) it is hereby ordered that said petition be, and the same hereby is denied.

BY THE COURT,

Assistant Clerk-Appellate

Dated: September 24, 1986
9-24-86
Notice to:
Clerk, Superior Court, New Haven,
CR6-121459
Clerk, Appellate Court

Arnold Markle, S.A.
Robert Devlin, A.S.A.
Julia DiCocco Dewey, A.S.A.
Paul M. Scimonelli, S.D.A.S.A.
Williams & Wise

John R. Williams in support of petition.

mlv

APPENDIX D

NO. CR6-211459

STATE OF CONNECTICUT : SUPERIOR COURT

VS. : J. D. OF NEW HAVEN

GLADYS HOBSON : OCTOBER 24, 1983

MOTION TO SUPPRESS PHYSICAL EVIDENCE

Pursuant to the Fourth and Fourteenth Amendments to the United States Constitution, the defendant moves that:

1. The Sony television set and Colt handgun seized from her house on October 7, 1982, be suppressed on the ground that the warrant authorizing the seizure of these items was the fruit of an illegal search and seizure conducted on the premises on September 24, 1982.

2. All items not listed in the search warrant dated October 6, 1982, and seized on October 7, 1982, be suppressed on the

following grounds:

a. The seizure of these items was not authorized under a search warrant;

b. The seizure of these items fell within no exception to the warrant requirement.

3. All testimony pertaining to these items be suppressed.

THE DEFENDANT

BY_____
JOSEPH G. BRUCKMAN
Her Attorney

ORDER

The foregoing motion having been considered this 24th day of October, 1983, it is hereby DENIED

ORDERED:

_____,J.

Service certified per Practice Book

_____

86-878

No. 86-_____

In The

Supreme Court Of The United States

OCTOBER TERM, 1986

GLADYS HOBSON,
Petitioner,

v.

STATE OF CONNECTICUT,
Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF CONNECTICUT

MEMORANDUM OPPOSING CERTIORARI

JULIA DiCOCCO DEWEY
Assistant State's Attorney
Office of the Chief State's Attorney
Division of Criminal Justice
340 Quinnipiac Street
Wallingford, CT 06492
(203) 265-2373

Counsel for Respondent

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTION PRESENTED

DID THE CONNECTICUT APPELLATE COURT PROPERLY CONCLUDE THAT BASED UPON THE TOTALITY OF CIRCUMSTANCES PRESENTED IN THIS CASE, THE ADMISSION OF ILLEGALLY SEIZED EVIDENCE CONSTITUTED HARMLESS ERROR?

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RULE 17.1

Revised Rules of the Supreme Court of the United States

Considerations Governing Review on Certiorari

1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or had decided a federal question in a way in conflict with a state court of last resort; or has so far departed

from the accepted and usual course of judicial proceedings, or so far sanctioned such a departute by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

STATEMENT OF THE CASE

After trial by jury, the petitioner, Gladys Hobson, was convicted of larceny in the third degrre, Connecticut General Statutes §§ 53a-119(8) and 53a-124(a).*1

Based upon the evidence produced at trial, the trial court could have reasonably concluded the following: pursuant to a duly authorized warrant,

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1 General Statutes § 53a-119(8) provides in pertinent part: "A person is guilty of larceny by receiving stolen property if he receives, retains, or disposes of stolen property knowing that it has probably been stolen or believing that it has probably been stolen, unless the property is received, retained or disposed of with purpose to restore it to the owner."

General Statutes § 53a-124(a) provides in pertinent part: "A person is guilty of larceny in the third degree when he commits larceny as defined in section 53a-119 and: (1) The value of the property or service exceeds one thousand dollars."

the petitioner's home was searched for evidence of drugs and drug paraphenalia. At the time of the search, the officers had reason to believe that the petitioner's adult son was engaged in the sale of drugs.

While executing the warrant, investigating officers noticed an unusually high quantity and diversity of consumer goods, many with sale tags still attached. The large volume of merchandise led the officers to believe that at least some of the articles were stolen. They recorded the serial numbers of some items, including a gun and television set. Subsequently, the officers secured a second warrant authorizing the seizure of those two latter items.

During the course of executing the second warrant, investigating officers

seized approximately 148 items, including the specified gun and television set. The Connecticut Appellate Court concluded that four of the items taken during that search were discovered during a limited exploratory or general search and consequently should have been suppressed. All other items were properly seized. The Court nevertheless concluded that the trial court's failure to suppress those four items was harmless error.

REASONS FOR DENYING THE WRIT

The Connecticut Appellate Court Did Not Resolve The Petitioner's Claims In A Manner Which Conflicted With Applicable Decisions Of This Court

The petitioner offers this Court an essentially factual question which has been resolved in favor of the State by the courts below. The sole question presented is whether the admission of

four illegally seized items constituted harmless error.

This Court noted in Rose v. Clark, ___ U.S. ___, 106 S. Ct. 3101 (1986):

> [if]the defendant had counsel and was tried by an impartial adjudicator, there is a strong presumption that any [] errors that may have occurred are subject to harmless error analysis. The thrust of the many constitutional rules governing the conduct of criminal trials is to ensure that those trials lead to fair and correct judgments. Where a reviewing court can find that the record developed at trial establishes guilt beyond a reasonable doubt, the interest in fairness has been satisfied and the judgment should be affirmed. As we have repeatedly stated, "the Constitution entitles a criminal defendant to a fair trial, not a perfect one."

Rose v. Clark, 106 S. Ct. at 3106-7 (citations omitted).

The petitioner recognizes the applicability of the Rose v. Clark doctrine, but argues that an error in

admitting plainly relevant evidence which possibly influenced the jury adversly to a litigant can never be conceived of as harmless. (Petition at 14-15). This misstatement of the law ignores a reviewing court's obligation to consider "the entire record prior to reversing a conviction for constitutional errors that may be harmless." United States v. Hastings, 461 U.S. 499, 509, n.7, 103 S. Ct. 1974, 1981, n.7 (1983). Review of the entire record supports the Connecticut Appellate Court's conclusion.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

STATE OF CONNECTICUT

By: Julia DiCocco Dewey

JULIA DICOCCO DEWEY
Assistant State's Attorney
Appellate Unit
Office of the Chief
State's Attorney
340 Quinnipiac Street
Wallingford, CT 06492
(203) 265-2372

Attorney for the
Respondent